

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 513

AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 8-23-2-5 IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2005]: Sec. 5. **(a)** The department, through the commissioner or the commissioner's designee, shall:

(1) develop, continuously update, and implement:

- (A) long range comprehensive transportation plans;
- (B) work programs; and
- (C) budgets;

to assure the orderly development and maintenance of an efficient statewide system of transportation;

(2) implement the policies, plans, and work programs adopted by the department;

(3) organize by creating, merging, or abolishing divisions;

(4) evaluate and utilize whenever possible improved transportation facility maintenance and construction techniques;

(5) carry out public transportation responsibilities, including:

- (A) developing and recommending public transportation policies, plans, and work programs;
- (B) providing technical assistance and guidance in the area of public transportation to political subdivisions with public transportation responsibilities;
- (C) developing work programs for the utilization of federal mass transportation funds;
- (D) furnishing data from surveys, plans, specifications, and

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estimates required to qualify a state agency or political subdivision for federal mass transportation funds;

(E) conducting or participating in any public hearings to qualify urbanized areas for an allocation of federal mass transportation funding;

(F) serving, upon designation of the governor, as the state agency to receive and disburse any state or federal mass transportation funds that are not directly allocated to an urbanized area;

(G) entering into agreements with other states, regional agencies created in other states, and municipalities in other states for the purpose of improving public transportation service to the citizens; and

(H) developing and including in its own proposed transportation plan a specialized transportation services plan for the elderly and persons with disabilities;

(6) provide technical assistance to units of local government with road and street responsibilities;

(7) develop, undertake, and administer the program of research and extension required under IC 8-17-7; ~~and~~

(8) allow public testimony in accordance with section 17 of this chapter whenever the department holds a public hearing (as defined in section 17 of this chapter); **and**

**(9) adopt rules under IC 4-22-2 to reasonably and cost effectively manage the right-of-way of the state highway system by establishing a formal procedure for highway improvement projects that involve the relocation of utility facilities by providing for an exchange of information among the department, utilities, and the department's highway construction contractors.**

**(b) Rules adopted under subsection (a)(9) shall not unreasonably affect the cost, or impair the safety or reliability, of a utility service.**

**(c) A civil action may be prosecuted by or against the department, a department highway construction contractor or a utility to recover costs and expenses directly resulting from willful violation of the rules. Nothing in this section or in subsection (a)(9) shall be construed as granting authority to the department to adopt rules establishing fines, assessments or other penalties for or against utilities or the department's highway construction contractors.**

SECTION 2. IC 8-23-7-2 IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2005]: Sec. 2. The department may acquire real property for any purpose necessary to carry out this article, including the following:

(1) To locate, relocate, construct, reconstruct, repair, or maintain a state highway, **including area for:**

**(A) the placement of a utility facility within the right-of-way of the state highway system; or**

**(B) the relocation of a utility facility within the right-of-way of the state highway system due to interference with a highway improvement project.**

(2) To widen or straighten a highway.

(3) To clear and remove obstructions to vision at crossings and curves.

(4) To construct weigh stations and rest areas.

(5) To provide scenic easements and other areas necessary to cooperate with the federal government or carry out a federal law.

(6) To facilitate long-range transportation planning.

SECTION 3. IC 8-23-9-58 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 58. **(a) This section applies to a construction contract entered into by the department and a contractor after June 30, 2005.**

**(b) The department may not include in a contract, or in any specifications or other documents that are a part of or incorporated in a contract, a provision that prohibits a contractor from receiving, or restricts the contractor in receiving, reasonable compensation or reasonable expenses directly related to unforeseen conditions encountered during the construction project as a result of:**

**(1) a conflict with the facilities of a utility (as defined in IC 8-1-9-2(a)); or**

**(2) delays due to the relocation of utility facilities; that differ materially from the affected utilities or utility relocations specified in the contract documents.**

SECTION 4. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "department" refers to the Indiana department of transportation established by IC 8-23-2-1.**

**(b) Not later than June 30, 2005, the department shall revise the department's standard specifications, drawings, and other documents that apply to a construction contract under IC 8-23-9 to remove any provision that prohibits a contractor from receiving, or restricts the contractor in receiving, reasonable compensation**

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or reasonable expenses directly related to unforeseen conditions encountered during a construction project as a result of:

(1) a conflict with the facilities of a utility (as defined in IC 8-1-9-2(a)); or

(2) delays due to the relocation of utility facilities; that differ materially from the affected utilities or utility relocations specified in the contract documents for a particular project.

(c) This SECTION expires January 1, 2007.

SECTION 5. An emergency is declared for this act.

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

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